SUPREME COURT, U. S.

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JOHN F. DAVIS

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1962

No. 122

EDWARD J. WELLENS,
Appellant,

vs.

DOUGLAS DILLON, Secretary of the Treasury, ABRAHAM RIBICOFF, Secretary of Health, Education and Welfare, CHARLES H. SHREVE, District Manager, and the SOCIAL SECURITY ADMINISTRATION,
Appellees.

"JURISDICTION"
for the
SUPREME COURT OF THE UNITED STATES IS "INVOKED"
UNDER THE FIFTH (5th) AMENDMENT
OF THE CONSTITUTION

On Appeal from the United States Court of Appeals for the Ninth Circuit, San Francisco 1, California

JURISDICTIONAL STATEMENT

EDWARD J. WELLENS,
729 Leavenworth Street,
San Francisco 9, California.
In Propria Persona
for Appellant.

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Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit, San Francisco 1, California

JURISDICTIONAL STATEMENT

This appeal is taken from the PER CURIAM of the UNITED STATES COURT OF APPEALS, for the NINTH CIRCUIT, San Francisco 1, California.

Affirming the GRANTING of Appellees' Motion to Dismiss something that did not exist, from the COURT below, and, contrary to the Appellant's petition on record.

> "This jurisdictional statement is filed in behalf of the Appellant named in caption, the others may file a separate jurisdictional statement."

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(1) APPELLEES ARE THE AGGRESSORS

"APPELLEES LET OUT A BIG CRY" That the Appellant failed to exhaust his Social Security Administrative remedies (hereinafter referred to as the Act) before commencing Court proceeding: But, utterly failed to admit their GUILT OF MALFEASANCE, and have MALICIOUSLY refused to perform their Ministerial duties upon the Constitutional questions submitted to be adjudged.

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(2) JURISDICTION

(a) The proceeding below was brought under the *** AMERICAN DOCTRINE *** That Legislative, Executive and Judicial departments should be separate and independent of each other, and exercised by different men or group of men;

"JUDICIAL POWER" cannot be exercised by either Legislative or Executive.

LEGISLATIVE *** may lay down certain policies and fix standards; but, *** CANNOT DELEGATE

ITS LEGISLATIVE POWERS *** they must leave to the other department the making of ***, SUBORDINATE ***, rules within the described limits.

(b) CONSTITUTIONAL LAW

ARTICLE III *** The judicial power is vested in the COURTS and shall extend to all cases in law and Equity, arising under this Constitution etc., al.

ARTICLE I, Section 9, "Says"

(3) NO BILL OF ATTAINDER OR EX POST FACTO LAW SHALL BE PASSED UNDER THOSE PRINCIPLES AND RULES.

Appellant filed his petition March 15th, 1961, with the Clerk of the UNITED STATES DISTRICT COURT, of the Northern District of California, Southern Division, for the said Court to determine Citizen's Constitutional Rights and pass judgment accordingly.

UNITED STATES DISTRICT COURT of the Northern District of California, Southern Division, Granted the Motion to Dismiss of the Appellees, September 11, 1961, *** because, the Court above mentioned failed to accord to the Appellant's petition that was sufficient in substance upon the Constitutional question in dispute *** was carried to the UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT, San Francisco 1, California, The PER CURIAM of the UNITED STATES COURT OF APPEALS, is dated March 6th, 1962. Notice of appeal to this Court was filed with the Clerk of the

UNITED STATES COURT OF APPEALS, on March 15th, 1962.

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(4) JURISDICTION

Of the SUPREME COURT OF THE UNITED STATES is "INVOKED" under the Fifth (5th) Amendment of the UNITED STATES CONSTITUTION. *** THAT CITIZENS CANNOT BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY *** WITHOUT DUE PROCESS, and CITIZEN'S RIGHT, WITHIN THE EQUAL PROTECTION OF THE LAW.

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(5) QUESTIONS PRESENTED

(1) The PLAN under the Act approved by Congress "provides that the Government" takes MONOPOLY of all employees without the employees' consent, also in violation of the SHERMAN ANTITRUST law, and, forced all employees into an unwanted Old-Age and Survivors Insurance. "It bound appellant who has been among the employees." And, in 1937, the Government began to CONFISCATE MONIES *(money that rightfully belonged to Commercial Insurance Companies *** under our free enterprise system *** depriving appellant of DUE PROCESS, —Private Insurance Companies can be sued upon the obligation.)*

(2) This monies that was CONFISCATED by the Government "called Taxes" was not taxed for *PUB-*

LIC USE, to the contrary it was to create a UNITED STATES TRUST FUND; to be known as the FEDERAL OLD-AGE and SURVIVORS Insurance TRUST FUND, with benefits payment to be made at the retirement Age 65 years.

(3) COME NOW: *"CAN CONGRESS ENACT PROVISIONS"* To bargain away Citizens' Rights against the *Will* of the people "that" affects PUBLIC HEALTH and PUBLIC MORALS? So, that it imposes unequal and unreasonable restrictions upon Citizens to promote inconveniences and hardship; that, can be avoided by the individual's own initiative???

(4) That is unreasonable and arbitrary, Disrimina-tory against some and favoring others that fall within the same category (under the same condition and circumstances)???

(5) That impairs the *MORAL OBLIGATION* "such as of a contract"?

(6) Invest power to an Agent of the Act; to *INVADE* "Citizens' Legal Rights" and *CONFISCATE* an individual's *WAGES* (that is not tax free) for the purpose - - - what Webster Dictionary - - Defines as SWINDLE - - - an eligible Claimant out of Social Security Old-Age Insurance benefits???

(6) SOCIAL SECURITY ACT, "PLAN"

Is not a HAND-OUT - - CHARITY - - WELFARE NOR RETIREMENT.

"It certainly must be crystal clear to everyone who is intelligent enough to think, that such monies paid for Social Security Old-Age Insurance benefits *** Manifest a *MORAL OBLIGATION* that as of a contract *** what constitutes *PROPERTY*. That cannot be held WITHOUT DUE PROCESS. *** ONLY 'Lunatics or Idiots take the contrary view' ***."

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(7) FINDINGS OF THE FACTS—OF THE ACT

PAYMENT CENTER: 1485 Market Street, San Francisco 2, Calif. Dated: April 10, 1961.

"Edward J. Wellens became entitled to Old-Age Insurance benefits of $81 a month beginning November 1959, the month in which he became 65 years of age. He has requested a reconsideration of the Bureau's determination that his Old-Age Insurance benefits were subjected to deductions under Section 203 (b) of the Social Security Act. For all months of 1960 by reason of his earnings. HOWEVER he also contends that the provisions of Section 203 (b) of the Social Security Act are UNCONSTITUTIONAL *** for reasons that—CONGRESS—cannot bargain Citizen's right away, and, that any discriminatory act made by Legislature are VOID."

(8) * CHALLENGE *****

The questions presented are whether the PER CURIAM of the UNITED STATES COURT OF APPEALS, Case No. 17,634, and, the judgment of the Court below; as construed and applied in this case "does DEPRIVE Citizens the right to exercise his FREEDOM so that he may live as FREEMEN work for wages to support without RESTRAINT" OR, being COMPELLED to ABANDON his right to earn wages for support in ORDER TO ENJOY THE FRUITS OF AN EARNED ACCRUED PROPERTY RIGHT *** WITHOUT DUE PROCESS ***?

SUBSTANTIVELY: Because Section 205 (g) and (h) of the Act, the Statutory remedies is made EXCLUSIVE. *** CONGRESS Waived their SOVEREIGN IMMUNITIES. *** And, the IMMORAL Section 203 (b) Of the Act: discriminate and is taking advantage of the WAGE earners ONLY, and FIX the earnings upon a speculative and guesswork and upon assumption having no rational basis of law or fact; and at an amount which is grossly inadequate and confiscatory; and, PROCEDURALLY, Because,

(9) QUASI-JUDICIALLY OF THE ACT

"GIVING THE HEARING EXAMINER'S and APPEALS COUNCIL POWER TO DETERMINE CITIZENS' LEGAL RIGHTS" Which *SERVES NO USEFUL PURPOSE,* within the meaning of a legitimate and reliable Old-Age Insurance PLAN, because "Certificate of eligible" is necessary and en-

titles a claimant to receive his Old-Age Insurance benefits in DIGNITY and SELF-RESPECT (without being subjected to INSULTS and ABUSES) and, the HEARING EXAMINER'S and APPEALS COUNCIL determination could not be supported by substantial and competent evidence and is not based upon a fair and open hearing before an impartial tribunal, and, in this case has Maliciously REFUSED to perform their Ministerial Duties upon the Constitutional questions submitted to be adjudged, and their claim is confiscatory of property without DUE PROCESS.

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(10) PROCEDURALS OF DUE PROCESS OF LAW

"The appellees' names in the caption are the names of the principals Agent and Collection of Agents of the Social Security Act. *** who are involved in a hopeless conflict of interest as *employees* of the said Social Security Act. *** and their Mental attitude expresses deliberate lack of consideration for others and is *UNCONSTITUTIONAL.* Because, it is contrary to the requirements of the DUE PROCESS of the 5th Amendment of the Constitution."

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(11) APPELLEES' ARGUMENTS

The arguments of the Appellees are plain erroneous; (a) they had to act QUASI-JUDICIALLY and their order had a legislative effect and was a Legislative Act; (b) because, their function is purely Investigation and fact findings and cannot Adjudi-

cate Citizens' rights, and it is also not based upon a FAIR and OPEN Hearing before an impartial tribunal. *** It is also ABSURD; Since nobody has to wait for a BUREAUCRACY convenience, NOR give advance NOTICE that a Citizen WILL assert and protect his Constitutional Rights, *** if and when an infringement of them is attempted, "*Because Citizens' Constitutional Rights cannot be shut off merely by an assertion in the absence of a justiciable controversy.*"

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(12) PROCEEDING BELOW

Appellant filed his petition to support a WRIT of MANDAMUS, IN the Clerk's office, of the UNITED STATES DISTRICT COURT, March 15, 1961, *the said Writ was never put in force.* It was filed for reason that the Social Security Administration Office, 1266 Market Street, San Francisco 2, California, "refused" to recognize Appellant's Application for Social Security Old-Age Insurance benefits, and he has been subjected to ABUSE and INSULTS by the employees. The said petition to support the said Writ of MANDAMUS was sufficient in substance of the Constitutional Questions in dispute by statements and alleged form, and MORAL Obligation *NOW* before this Court. (*Typewritten Record,* page 33.) *** Because a Request for a Hearing—before a Hearing Examiner—, *was dismissed* *** a SUMMONS was issued by the Clerk's Office of the UNITED STATES DISTRICT COURT, and the UNITED STATES Marshal's Office—served and delivered the petition to

the Secretary of the HEALTH, EDUCATION and WELFARE, May 24, 1961. THEREAFTER: A hearing was set for June 14th, 1961, Appellant appeared with Constitutional and MORAL obligation questions to be considered and determined—Albert Whitton, Hearing Examiner—*DENIED* the hearing, and on June 21st, 1961, RENDERED his decision in conformity to the IMMORAL Section 203 (b) of the Social Security Act. (This constitutes falsifying PUBLIC RECORDS) *** APPELLANT'S PROTEST TO WORDS AND PHRASE *** Filed with Social Security Administration Hearing Office, by Mail June 22nd, 1961, REQUESTS for REVIEW followed, First request is dated April 10, 1961 and again June 24, 1961, *** Which the Appeals Council Refuses to perform their Ministerial Duties upon the Constitutional Questions submitted to be Adjudged.

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(13) UNITED STATES ATTORNEY'S OFFICE

Counsel for the Appellees replied to Appellant's petition on file in the office of the Clerk of the UNITED STATES DISTRICT COURT, and served by U. S. MARSHAL, with a "MOTION TO DISMISS the petition; the motion should have been held NULL and VOID, and had no effect; because; Appellant did not ask the Court for a Review so there was nothing to dismiss and it was contrary to the petition that was sufficient in substance of the Constitutional question in dispute by statement and alleged form.

"UNITED STATES Attorney's office might well have approached the problems presented to it and resolved these problems differently than they did and approached the problem by reasoning that the Individual's Constitutional fundamental rights cannot be substituted by an IMMORAL Act of Congress, *** because, Congress is limited by our Constitution Amendments, and that Congress cannot DELEGATE its own Legislative power. ***"

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(14) JUDGMENT

By the Court below—Dated September 13th, 1961—was not in accord with Appellant's petition (that was sufficient in substance upon the dispute in question) and the findings were not supported by substantial and competent evidence adduced at the said hearing, or, otherwise, and the Court below decided erroneously the Constitutional question of general importance, therefore the said findings and order of the said Court below deprived Appellant of property without DUE PROCESS of law, contrary to the Fifth (5) Amendment of the Constitution.

The Court below held that it was not the Court's duties to look in the nature of the relief Appellant is seeking. That, the Government motion on all grounds stated are valid; prolonging arguments would be of no advantage. The action was dismissed and an appeal followed.

Appeal was taken from the judgment of the Court below to the UNITED STATES COURT OF AP-

PEALS, for the NINTH CIRCUIT, San Francisco 1, California, to be heard and tried upon Constitutional merits.

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(15) HEARING—UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

March 5th, 1962, Three (3) Judges sitting in bank; Appellant again raised the Constitutional question and applied the DUE PROCESS rule, but, like the Court below, went on to hold that it is for the Social Security Administration to determinate and that Appellant did not exhaust his administrative remedies in conformity with Section 205 (g) and (h) as the Statutory remedy is thus made exclusive.

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(16) SUBSTANTIAL CONSTITUTIONAL QUESTIONS ARE RAISED ON THIS APPEAL

SUBSTANTIVE DUE PROCESS: Social Security Administration is a Legislative function, and exercised of the reserved power of the Legislature to alter, amend and modify; that while, to perform their delegate function to pass upon the fairness of the *PLAN*, the Social Security Administration had to act QUASI-JUDICIALLY and their order had a Legislative effect and was in fact a Legislative Act. Which was an exercise of DELEGATED Legislative power, *** and therefore a statute within the meaning of 1257 (2) of the Judicial Code *** is unconstitutional because it provides for the taking of appellant's property that is plainly confiscatory and holding Ap-

pellant's property by order of the Court below resulting to a denial of DUE PROCESS of law.

Section 203 (b) of the Act. Plainly shows it was a violation of the DUE PROCESS to provide for the taking monies from Appellant for payment upon a speculative and guesswork or upon an assumption that it will not become Obligated to condition for fulfillment.

> "Another point raised by the Appellant in United States Court of Appeals, is that he was deprived of substantive Due Process, Because, the monies earned is not tax free and that the Government is taking property to take advantage of Appellant for an IMMORAL purpose to avoid payment of Social Security Old-Age Insurance benefits, and that the Section 203(b) is fixed to take advantage of wage earners only and made special provisions for Millionaires and others with moderate income free from any restriction."

---

(17) FIXING THE LIMITATION OF WAGE EARNERS ONLY (Within Section 203 (b) of the Act)

IS UNREASONABLE AND ARBITRARY DISCRIMINATION: With the Respect to the operation or influence of Section 203 (b) of the Act; Because it is a MOTIVE to confiscate money upon an assumption not to become obligated and in order to obtain the results. Congress had to RIG and describe limits. (What Webster Dictionary defines as SWINDLING: taking money or property from "another" under false pretense)—"Fix the Social Security Old-Age

Insurance benefits at a rate that is insufficient to support, and limited the eligible beneficiary wages at a low level and calculate the combined incomes is not sufficient to have a comfortable living. *The described limits on the wages is not supported by substantial and competent evidence,* and it is unreasonable, *(because the additional wages earned does not change the amount of the Benefits).* "Another" reason why it is UNREASONABLE and ARBITRARY DISCRIMINATORY: Millionaires and people with income from large investments, receive their Social Security Old-Age Insurance benefits without any restriction and tax free. *THEREFORE:* Social Security Insurance benefits is not a relief for the INDIGENTS. Section 203 (b) cannot be construed any different, in manner and form than a perfect IMMORAL PREMEDITATED SCHEME to take advantage of the poor honest working people age 65-72 years, with the INTENT to *"swindle"* them out of their Old-Age Insurance benefits (WHICH CONSTITUTES A BILL OF ATTAINDER) and a EX POST FACTO LAW, because it was enacted for the purpose to defraud a citizen out of his earned accrued property right after the obligation was in effect.

(18) ARGUMENT PLEADED TO UNITED STATES COURT OF APPEALS—MARCH 5, 1962

Appellant does not attack the precedent of the Court as BIAS nor Prejudice toward Appellant: But, "however" attacks the Court for sanctioning the substantial evidence form of Judicial review. The Court erroneously decided the proceedings and failed to accord to the Constitutional questions submitted to be determined.

(a) The present case involves no comparable circumstances with Judicial review. It is all based within the meaning of Citizens' Constitutional Rights and MORAL Obligation of the Act. *Which are guaranteed to Citizens in our Constitution against Invasion.*

(b) The monies taken in the Federal Old-Age and Survivors Insurance TRUST FUND: *"MANIFEST"* the Obligation the same as a contract—and the rights to the party named under it. But, the original enactment of Congress of the Act, was seriously impaired by burdening the proceeding with new conditions and restrictions. NAMELY that IMMORAL Section 203 (b) of the Act. Framing that section so to take Advantage of the poor wage earners at the age 65-72 only, whereby the Government under the Act, confiscates the earnings of the eligible claimant for the purpose to relieve the Social Security payment Center from meeting their obligation to pay Old-Age Insurance Benefits. At the same time the individual who earns this additional income for support and necessities to life and Health must pay

taxes on this earnings. "THIS CONSTITUTES AN EX POST FACTO LAW, because it was enacted after the obligation became effective. And, the QUASI-JUDICIALLY Section 205 (g) and (h) AN UN-AMERICAN PROCEEDING eliminating the power of the Courts, for the purpose to destroy and by-pass the principles and rules of the United States Constitution. So, Congress has the opportunity to DELEGATE its own Legislative power; against the WILL of the people, and contrary to the requirements of the DUE PROCESS CLAUSE—of the 5th Amendment of the United States Constitution. And Congress waiving the Sovereign immunities on equal Terms with the United States Government 'indispensable' so

> As to make the Remedy hardly worth pursuing; because there was no law to enforce a contract and the United States Government is indispensable to be sued and without a remedy you might say that no contract existed."

BUT: the MORAL OBLIGATION remains, because it was supported by a consideration before the enactment of Section 203 (b) in 1950, and it falls within the "CLASS OF THOSE MORAL AND SOCIAL DUTIES" which depends for fulfillment upon the WILL of the fundamental rights of the individual. Because the validity and remedy are inseparable, both are parts of the Obligation *"WHICH ARE GUARANTEED by the UNITED STATES CONSTITUTION AGAINST 'INVASION'"*. Therefore, the Obligation itself is the Law which binds the Social Security Act to perform and carry

out "THEIR" DUTIES. AND, in the NATURE of a LEGAL MONOPOLY and its accompanying Obligation to the PUBLIC. The Government under the Act, is under MORAL obligation to serve the Appellant in a corresponding duty as a COMMERCIAL Insurance Company, as fundamental right to a Citizen "AGAINST" INVASION.

CONCLUSION

The UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT, failed to respond to Appellant's Constitutional Questions and MORAL Obligation of the Act. Had they done so, Appellant's claim would have been approved upon the evidence adduced to the Court, March 5th, 1962, but, instead the Court sanctioned the substantial form of Quasi-Judicially and has put the Social Security Act in a position where it can continue to enjoy possession of Appellant's Old-Age Insurance benefits for a time at their own will and conveniences without *ever being compelled to compensate Appellant a RED CENT,* for the money the United States Government confiscated from Appellant without DUE PROCESS for payment upon a speculative and guesswork or upon an assumption that it never will become obligated to conditions for fulfillment. Since this passage was written the problem has become critical, because the power to determine citizens' rights and privileges is vested in the Agents and Collection of Agents of the Act. A decision on the Merits by this Court would not

only redress great private wrongs, which will be for the Highest Public interest, but, would also aid in the administration of public justice by showing that similar outrages will not be permitted in Violation of DUE PROCESS "while this Court sits."

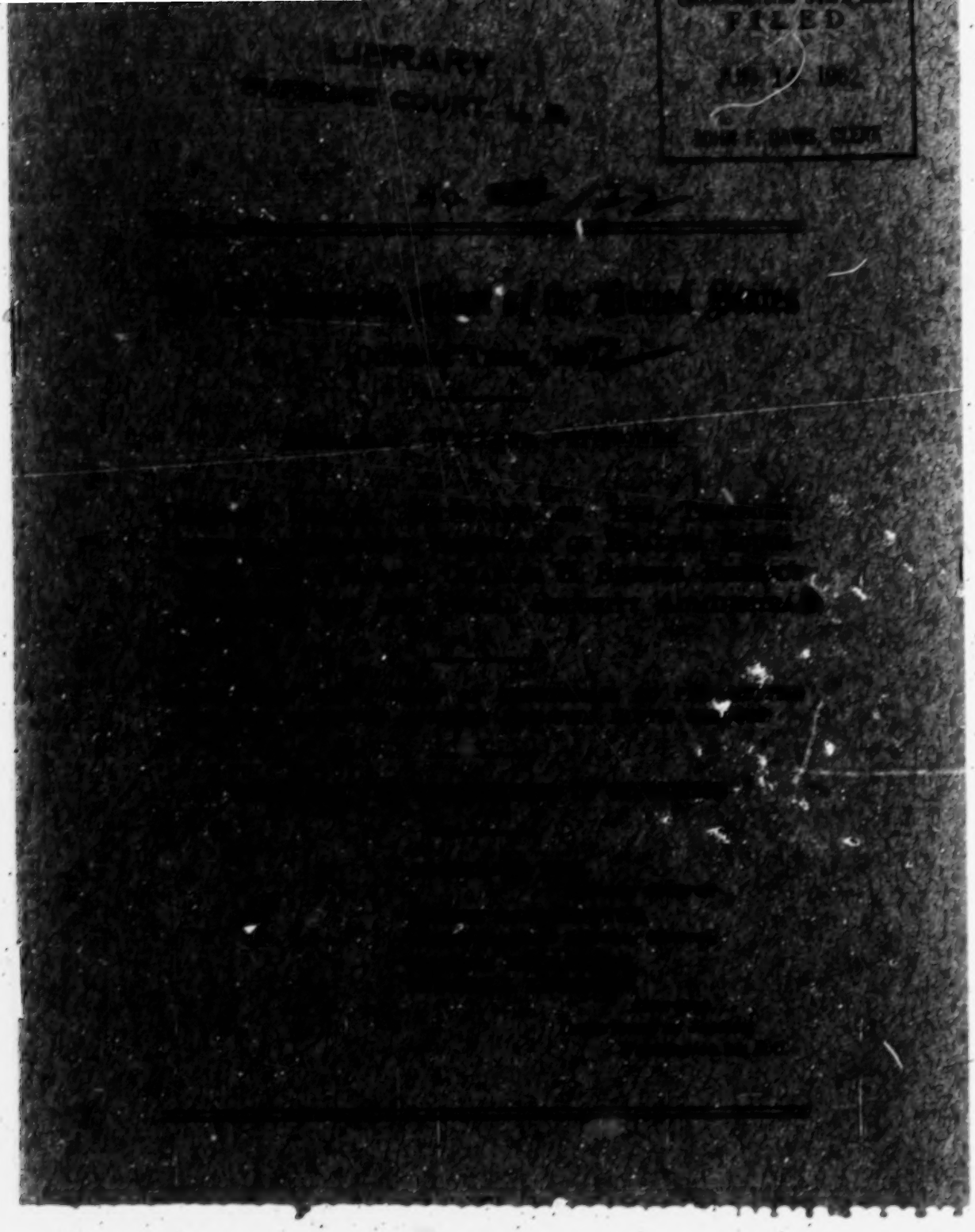
ALTERNATIVE APPLICATION FOR CERTIORARI

In the event this Court should hold that this is not a proper case for appeal, we respectfully ask that this JURISDICTIONAL Statement be treated as a Petition for Certiorari, and that this Court issue its writ directed to the UNITED STATES COURT OF APPEALS, for the NINTH CIRCUIT, San Francisco 1, California, to the end that the case may be reviewed on the Constitutional Merits by this Court.

It is submitted that the Court below and the United States Court of Appeals for the Ninth Circuit decided erroneously constitutional questions of general importance which this Court should herein determine and adjudicate on Appeal or Certiorari.

Respectfully submitted,

EDWARD J. WELLENS,
In Propria Persona
for Appellant.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643430—62

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 975

EDWARD J. WELLENS, PETITIONER

v.

DOUGLAS DILLON, SECRETARY OF THE TREASURY; ABRAHAM RIBICOFF, SECRETARY OF HEALTH, EDUCATION, AND WELFARE; CHARLES H. SHREVE, DISTRICT MANAGER; AND THE SOCIAL SECURITY ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The order of dismissal entered by the district court (R. I,[1] p. 3) is not reported, and the *per curiam* opinion of affirmance by the court of appeals (R. II, p. 3) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on March 6, 1962 (R. II, p. 5). Petitioner's "Juris-

[1] The record certified by the clerk of the court of appeals to this Court consists of 2 typewritten volumes. Record references to the two volumes will be cited as "R. I" and "R. II," respectively.

dictional Statement" or "Alternative Application for Certiorari" (p. 18) was filed May 15, 1962. Since this is not a proper case for appeal, we are responding to the document filed by petitioner as we would to a petition for certiorari. This Court's jurisdiction over such a petition rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in view of petitioner's failure to follow the exclusive judicial review procedure prescribed by Section 205 (g) and (h) of the Social Security Act, both courts below properly refused to set aside the administrative denial of his claim for benefits under that Act.

STATUTE INVOLVED

In pertinent part, Sections 203(b) and 205 (g) & (h) of the Social Security Act, as amended, 42 U.S.C. (Supp. II) 403(b) and 405 (g) & (h), provide:

> [§ 203] (b) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—
>
> (1) such individual's benefit or benefits under section 402 of this title for any month, and
>
> (2) if such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such indi-

vidual's wages and self-employment income, if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (1) and (2). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. * * *

[§ 205] (g). Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of its answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive and where a claim has been denied by the Secretary or a decision is

rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(h) The findings and decisions of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing.

> No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 41 of Title 28 to recover on any claim arising under this subchapter.

STATEMENT

In November of 1959 petitioner, then 65 years old, applied for social security old age insurance benefits (R. I, pp. 28–29). On February 1, 1961, he was advised by the Bureau of Old Age and Survivors Insurance (1) that he was eligible for old age insurance benefits of $81.00 per month as of November 1959; (2) that no such benefits were payable to him for the years 1959 and 1960 because of his employment or self-employment during that period; (3) that no benefits were presently due him because he was then working and expected his earnings to exceed $1,200 in the year 1961; and (4) that he could ask for reconsideration of this decision within six months thereof (R. I, p. 25).

On February 8, 1961, petitioner requested reconsideration (R. I, p. 25). On the following day, however, without awaiting the disposition of that request, he filed a request for a hearing before a hearing examiner (R. I, p. 25). This request was dismissed by the hearing examiner on April 7, 1961 on the ground that it was premature, since the Bureau had not yet ruled on petitioner's request for reconsideration of its original decision (R. I, p. 25). On April 10, 1961, the Bureau affirmed its previous decision (R. I, p.

25). At the same time petitioner was advised that if he believed the reconsideration determination to be incorrect he could apply for a hearing before a hearing examiner of the Social Security Administration (R. I, p. 25).

On April 14, 1961, petitioner filed a request for such a hearing (R. I, p. 25). This hearing was held on June 14, 1961 (R. I, p. 25). On June 20, 1961, the examiner ruled that petitioner had earnings from self-employment in 1960 in excess of $2080 and that therefore his benefits for the year 1960 were subject to deductions as provided in section 203(b) of the Act, pp. 2–3, *supra* (R. I, pp. 25–26).

Meanwhile, on March 15, 1961, prior even to the Bureau's reconsideration of its original decision, petitioner instituted the present action for a writ of mandamus in the United States District Court for the Northern District of California. In this action he sought to compel respondents to pay him the old age insurance benefits to which he claimed he was entitled (R. I, pp. 28–33). Respondents moved to dismiss the complaint, asserting *inter alia* that the review procedure provided for in Section 205(g) of the Act, pp. 3–4, *supra*, is exclusive and that mandamus is therefore not available to a claimant seeking to challenge an administrative denial of social security benefits. On September 11, 1961, the district court granted the government's motion to dismiss the complaint (R. I, p. 3).

On appeal, the court of appeals affirmed in a *per curiam* opinion. It held that mandamus would not lie because the exclusive method of judicial review

in social security cases such as this was that provided by Section 205(g) of the Act. The court noted that Section 205(h) made exclusive the statutory remedy prescribed by Section 205(g) and that hence "it was proper to dismiss the present proceedings" (R. II, p. 4).

ARGUMENT

Both courts below, in denying petitioner's claim, properly applied settled principles governing judicial review of administrative action. Moreover, there is no substance to the constitutional issue petitioner seems to suggest. There is no conflict of decisions and we submit that review by this Court is not warranted.

1. By resorting to mandamus, petitioner has attempted to invoke a review procedure not prescribed by Sections 205 (g) and (h) of the Social Security Act. Section 205(h) explicitly provides that administrative decisions under the Social Security Act are not reviewable "except as * * * provided" in the Act. Even in the absence of such an express exclusivity provision, it is clear that the review procedure prescribed by Section 205 of the Act would be deemed exclusive and hence a bar to relief by way of mandamus. See *Myers* v. *Bethlehem Corp.*, 303 U.S. 41, 48–50; *Sunshine Coal Co.* v. *Adkins*, 310 U.S. 381, 404; *City of Tacoma* v. *Taxpayers*, 357 U.S. 320, 339. Accordingly, both courts below were plainly correct in rejecting petitioner's application for a writ of mandamus.

2. While the substance of his complaint here, as in the court below, is unclear, petitioner apparently con-

tends that it is unconstitutional to withhold social security benefits because of his earnings from self-employment; as required by the deduction provisions of Section 203(b) of the Act, pp. 2–3, *supra*. But constitutional arguments similar to, and no less meritorious than, those relied on by petitioner have already been considered and rejected by this Court. *Flemming* v. *Nestor*, 363 U.S. 603; see also *Price* v. *Flemming*, 280 F. 2d 956 (C.A. 3), certiorari denied, 365 U.S. 817. There is, we submit, no substance to any of petitioner's constitutional contentions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the "Jurisdictional Statement" should be treated as a petition for a writ of certiorari and that, so considered, it should be denied.

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